IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

MFA.No. 351 of 2001()

OPMV.1474/1997 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
.....

APPELLANT/PETITIONER:

JOSEPH K.V. ALIAS JOSE,
AGED 40, KADUNGA PARAMBU CHIRAYIL,
ALISSERY WARD, ALAPPUZHA.

BY ADV. SRI.P.CHADRASEKHAR
SRI.S.SHANAVAS KHAN

RESPONDENTS/RESPONDENTS:

1.ENGIN RICHARD, S/O.RICHARD,
RICHU HOUSE, VATTAYIL WARD,
ALAPPUZHA.
(OWNER AND DRIVER OF KL-4-C 8113 MOTOR CYCLE)

2.THE ORIENTAL INSURANCE CO. LTD.
ALAPPUZHA BRANCH, CULLON ROAD,
ALAPPUZHA.

BY ADV. SRI.M.JACOB MURICKAN FOR R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.351 OF 2001 (D)

Dated this the 2nd day of July, 2007

J U D G M E N T

KOSHY,J.

Appellant petitioner met with an accident on 17.5.1996. He was knocked down by a motor cycle bearing registration No.KL 4 C 8133 ridden and owned by the 5th respondent and insured by the 2nd respondent. He claimed $1^1/_2$ lakhs as compensation for the injuries sustained in the accident. Tribunal found that accident occurred due to the negligence of the 1st respondent and the vehicle was insured by the 2nd respondent. Total compensation awarded was only Rs.8,850/- with interest. Aggrieved by the amount of compensation awarded, this appeal was filed.

2. As per Ext.A3 wound certificate it is certified that petitioner has contusion on the right knee. There was no fracture. Ext.A6 series shows that there was ligament sprain and plaster was seen applied for five weeks. Ext.A7 is the

disability certificate which shows as follows:

> "The injury as per the reference is medical ligament sprain (R) knee. As examined today patient has pain and stiffness of (R) knee with difficulty in squatting. On clinical and radiological evaluation there is terminal fairful limitation of flexion of right knee, tenderness over the medial joint line and early osteoarthritic changes in the knee.
>
> For the above his permanent total disability is estimated as ten percent (10%)."

The above certificate was issued by Orthopaedic Surgeon, Medical College Hospital dated 5.7.1997. Ext.A8 shows that he was a salesman in a provisional store earning Rs.3,000/- per month. He used to supply articles through cycle also.

3. According to Ext.A8 and PW1 since he was unable to do the cyclic work after the incident he was denied work. Tribunal did not accept Ext.A7 disability certificate as according to him since there was no fracture there cannot be 10% disability. Since qualified doctor who is an Ortheopaedic surgeon certified 10% disability, we take 5% disability for assessment of compensation. According to the claimant he was getting Rs.3,000/- per month. There was no data for it. Therefore tribunal fixed Rs.1,500/- as monthly income. We see

no ground to change it. He was aged 36 at the time of accident. Taking the second schedule as guideline multiplier can be fixed at 16. Then compensation payable will be 1500 x 12 x 16 x $^{5}/_{100}$ = Rs.14,400/-. Tribunal has granted Rs.3,000/- only. Therefore additional compensation payable for disability and loss of earning power will be Rs.11,400/-. For treatment expenses, tribunal has awarded only Rs.500/-. He was put plaster for over five weeks and care was necessary and for treatment expenses we award another Rs.600/-. For pain and sufferings tribunal has granted only Rs.3,000/-. Considering the nature of injuries and treatment, we award the sum of Rs.5,000/- on the above head. He was under treatment and unable to do any work for about $2^{1}/_{2}$ months. Tribunal has granted only Rs.2,250/-. We are of the opinion that for attendant expenses Rs.1,000/- should be granted in addition. Therefore total additional compensation payable will be Rs.15,000/-. It is submitted that the amount awarded under all other heads was very meager. We are of the opinion that no enhancement is needed on other heads. So the additional amount of Rs.15,000/- over and above the decreed amount by the tribunal should be deposited by the 2nd respondent Insurance company with 8% interest from the date of

application till its deposit. On deposit of the above compensation, appellant is free to withdraw the same. Accordingly appeal is partly allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.351 OF 2001 (D)

J U D G M E N T

2nd July, 2007